

ALLISON LAPLANTE (OSB 023614)
Earthrise Law Center
Lewis & Clark Law School
10015 SW Terwilliger Blvd.
Portland, OR 97219
(503) 768-6894 (phone)
(503) 768-6642 (fax)
laplante@lclark.edu

Attorney for Plaintiff

S. AMANDA MARSHALL
United States Attorney
District of Oregon
STEPHEN J. ODELL (OSB No. 90353)
Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204-2902
(503) 727-1024 (tel) / (503) 727-1117 (fax)

JOHN C. CRUDEN
Assistant Attorney General
U.S. Department of Justice
Environment & Natural Resources Division
MEREDITH L. FLAX (DCB 468016)
Senior Trial Attorney
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611
(202) 305-0404 (phone)
(202) 305-0275 (fax)
meredith.flax@usdoj.gov

Attorneys for Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL
ADVOCATES,

3:05-cv-1876-AC

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Defendants.

**JOINT MOTION TO MODIFY
PARAGRAPH B.3. IN STIPULATED
ORDER ON NONPOINT SOURCE AND
ENDANGERED SPECIES ACT
REMEDIES**

Pursuant to Local Rule 7-1, undersigned counsel certify that the Plaintiff Northwest Environmental Advocates (“Plaintiff”) and Defendants, the U.S. Environmental Protection Agency (“EPA”), the National Marine Fisheries Services (“NMFS”), and the U.S. Fish and Wildlife Service (collectively, “Defendants”) have conferred through counsel and have reached an agreement regarding the subject of this motion. Plaintiff and Defendants jointly move the Court to modify Paragraph B.3. in the Stipulated Order on Nonpoint Source and Endangered Species Act (“ESA”) Remedies (“Order”) (ECF No. 351) to allow NMFS 120 additional days to complete consultation with EPA regarding the impacts of EPA’s approval of Oregon’s temperature water quality standards on ESA-listed species and designated critical habitat. Counsel for Defendant-Intervenors State of Oregon and Northwest Pulp and Paper Association (“NPPA”) were contacted about this motion. The State indicated that it does not object to the relief requested in this motion. No response from NPPA was provided as of the time of filing.

Per the Order, and this Court’s subsequent Orders modifying the deadlines in the Order, NMFS is required to complete ESA consultation with EPA by July 6, 2015. Order ¶ B.3.; Doc. Nos. 351, 401, 404, 406. NMFS has been working diligently on the consultation. NMFS completed a draft biological opinion, which it provided to EPA on June 1, 2015. The draft

biological opinion includes a draft conclusion of jeopardy associated with the 20° C numeric temperature criterion. NMFS requires additional time to allow for sufficient intra- and inter-agency coordination, including addressing comments it anticipates receiving from EPA and the Oregon Department of Environmental Quality, which was recently granted “applicant” status for the consultation. *See* 50 C.F.R. § 402.02 (definition of “applicant” for purposes of consultation). Under the ESA section 7 implementing regulations, NMFS must discuss its evaluation, the basis of its findings, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) with an applicant, and must utilize the applicant’s expertise in identifying alternatives. *Id.* § 402.14(g).

Plaintiff and Defendants have discussed Defendants’ requested extension and have reached agreement. They hereby jointly request that the Court modify Paragraph B.3. of the Order to require NMFS to complete its consultation within 24 months of receiving a Biological Evaluation from EPA. This will result in a deadline of November 3, 2015 for completion of the consultation.

Dated this 2nd day of July, 2015

Respectfully submitted,

/s/ Allison LaPlante (by permission to MLF)

Allison LaPlante (OSB 023614)
 Earthrise Law Center
 Lewis & Clark Law School
 10015 SW Terwilliger Blvd.
 Portland, OR 97219
 (503) 768-6894 (phone)
 (503) 768-6642 (fax)
 laplante@lclark.edu

Attorney for Plaintiff

JOHN C. CRUDEN

Assistant Attorney General
 U.S. Department of Justice
 Environment & Natural Resources Division

/s/ Meredith L. Flax

Meredith L. Flax
 Senior Trial Attorney (DCB 468016)
 Wildlife & Marine Resources Section
 Ben Franklin Station, P.O. Box 7611
 Washington, D.C. 20044-7611
 (202) 305-0404 (phone);
 (202) 305-0275 (fax)
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UNITED STATES ENVIRONMENTAL
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**ORDER ON JOINT MOTION TO
MODIFY PARAGRAPH B.3. IN
STIPULATED ORDER ON NONPOINT
SOURCE AND ENDANGERED
SPECIES ACT REMEDIES**

The Parties' Joint Motion to Modify Paragraph B.3. in the Stipulated Order on Nonpoint Source and Endangered Species Act Remedies is GRANTED. IT IS ORDERED THAT the National Marine Fisheries Service shall complete its consultation with the Environmental Protection Agency ("EPA") within 24 months of receiving a Biological Evaluation from EPA, which will result in a deadline of November 3, 2015.

DATED this ____ of _____, 2015.

John V. Acosta
United States Magistrate Judge

Submitted by:

/s/ Meredith L. Flax

MEREDITH L. FLAX (DCB 468016)

Senior Trial Attorney

Wildlife & Marine Resources Section

Ben Franklin Station, P.O. Box 7611

Washington, D.C. 20044-7611

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(202) 305-0275 (fax)

meredith.flax@usdoj.gov

Attorney for Defendants